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**BEFORE THE PUBLIC UTILITIES COMMISSION**

Order Instituting Rulemaking Regarding	)	
Policies, Procedures and Incentives for	)	R.04-03-017
Distributed Generation and Distributed	)	
Energy Resources	)	
_____)		

**REPLY OF FUELCELL ENERGY, INC. TO RESPONSES OF  
UTC POWER CORPORATION, CALIFORNIA CENTER FOR SUSTAINABLE  
ENERGY, PACIFIC GAS AND ELECTRIC COMPANY, AND SOUTHERN  
CALIFORNIA EDISON COMPANY**

In accordance Rule 16.4(g) of the California Public Utilities Commission’s Rules of Practice and Procedure, FuelCell Energy, Inc. (“FuelCell Energy” or “FCE”) respectfully submits the following Reply addressing issues raised in the UTC Power Corporation (“UTC”), California Center for Sustainable Energy (“CCSE”), Pacific Gas and Electric Company (“PG&E”) and Southern California Edison Company (“SCE”) responses to FCE’s Petition for Modification of Decision 04-12-045. ALJ Duda has granted FuelCell Energy permission to file this Reply within 10 days of August 30, 2007, which was the last day for filing responses to the Petition for Modification.<sup>1</sup>

**I. Introduction**

FuelCell Energy appreciates this opportunity to respond to arguments and recommendations raised in the responses of UTC, CCSE, PG&E and SCE. FuelCell Energy is pleased that of the 19 parties filing responses, all but one support FuelCell Energy’s proposal in whole or in part. FuelCell Energy addresses in detail below the objections of UTC and the limits and conditions recommended by CCSE, SCE and PG&E.

<sup>1</sup> FuelCell Energy initially filed its Petition for Modification on July 25, 2007 in Docket 06-03-004, the current Self-Generation Incentive Program (“SGIP”) proceeding, but was subsequently instructed to refile and serve the Petition in Docket 04-03-017, the closed proceeding in which Decision 04-12-045 was originally issued. FuelCell Energy complied with this instruction on July 31, 2007.

## **II. The Petition for Modification was timely filed.**

UTC alleges that FuelCell Energy's Petition was filed "out of time" and "without adequate justification for the late submission."<sup>2</sup> UTC's allegation is unfounded. Rule 16.4(d) expressly authorizes the filing of petitions for modification as long as the petition explains why the request could not have been presented within one year of the effective date of the decision. FuelCell Energy's Petition clearly complies with this requirement.

The Petition explains that the change sought in Decision 04-12-045 could not have been requested within one year of the issuance of that decision because it was only after working with customers considering investment in SGIP-supported fuel cell installations, and gaining knowledge of how the 1 MW limitation affects system economics and third party financing that FCE became aware of the need for modification of Decision 04-12-045. In particular, the Petition details FCE's conversations with wastewater treatment plant owners who have tried but failed to cost-justify installation of fuel cells at larger facilities in the absence of incentives.<sup>3</sup> The Petition is accompanied by a sworn declaration documenting the need for incentives over 1 MW and explaining that this information has been uncovered through experience and customer contact in recent years.<sup>4</sup>

UTC states in its Response that larger customers have existed since SGIP's inception.<sup>5</sup> FCE does not dispute this fact. It is the information gained from working with these potential customers, and the experience gained from trying to market DG systems to this group of potential customers that is new, *not* the customers themselves.

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<sup>2</sup> UTC Response at 3.

<sup>3</sup> Petition at 4-6.

<sup>4</sup> Declaration of William Karambelas, appended to the Petition.

<sup>5</sup> UTC Response at 3.

UTC has offered no evidence contradicting FuelCell Energy's statements in support of its Petition. No other party supports UTC's argument that the Petition should be rejected as out of time. In fact, statements in other parties' filings underscore that recent experience (i.e. information gained since December 2005) supports FCE's request.<sup>6</sup> For these reasons the Commission should reject UTC's argument that FCE has not satisfied the requirements of Rule 16.4(d).

**III. UTC's discussion of the success of SGIP in developing the market for small DG application begs the question.**

UTC repeatedly argues that the success of the current SGIP program justifies its continuation as is.<sup>7</sup> This argument entirely misses the point of FCE's Petition. FCE agrees that the current SGIP program has proven successful in developing new markets for *small* fuel cell applications. The problem is that the 1 MW cap on incentives inhibits development of the separate market for larger installations. This is an issue of scale, which UTC does not address. Perhaps UTC's experience is limited to the smaller DG market, in which case UTC has no basis for its unqualified statement that "success" should be measured by the number of small DG units rather than the breadth of market development for units of all sizes.

**IV. The important goal of ensuring broad distribution of funds should be balanced against the equally important goal of creating new markets for DG.**

UTC offers its opinion that the alleged "harm caused by diminishing funds available for broad distribution to customers" outweighs the harm caused by denying incentives adequate to justify participation by larger customers.<sup>8</sup> FuelCell Energy agrees

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<sup>6</sup> See e.g. PG&E Response at 2; National Fuel Cell Research Center Response at 2.

<sup>7</sup> UTC Response at 3, 4, 5.

<sup>8</sup> UTC Response at 6.

that the Commission needs to balance needs and goals. However, that does not mean the Commission should automatically favor using program funds to support smaller rather than larger scale projects solely to maximize the total number of participants. UTC's approach is overly simplistic and unduly exclusive.

Everyone recognizes the importance of distributing limited SGIP funding in a rational way. However, this objective shouldn't preclude discussion of extending funding to promote market development for larger DG installations. *Both* objectives are important, so the question is how to spread the money around in a way that encourages continued development of small DG while also helping to develop a market for larger DG. The Center for Energy Efficiency and Renewable Technologies ("CEERT"), CCSE and the utilities seem to understand this.<sup>9</sup>

As discussed in FCE's Petition, the Commission can impose conditions to ensure that funds are fairly allocated between large and small DG. FCE supports consideration of practical approaches to preserving program funds while encouraging development of a market for larger DG applications. Parties have suggested a number of options for balancing program priorities, and there are probably other possibilities as well.

First, the Commission can allocate funds between large and small customer classes. FCE would support this approach as long as the Commission retained the discretion to shift funds from one category to the other in response to changing circumstances.

Second, the Commission could scale incentives. PG&E, for example, proposes providing \$4.50/watt up to 1 MW and \$2.50/w for incremental MWs.<sup>10</sup> FuelCell Energy

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<sup>9</sup> See Response of CEERT at 2, PG&E Response at 3-4; SCE Response at 2-3; CCSE Response at 5-6.

<sup>10</sup> PG&E Response at 3. See also CCSE Response at 6.

supports this concept, but believes that a three tier approach would better reflect the natural size cutoff between larger and smaller projects. Specifically FuelCell supports providing \$4.50/w up to 1.5 MW, \$3.50/w up to 2.5 MW, and \$2.50 up to 3 MW.

Third, the Commission could limit incentives above 1 MW to fuel cells. SCE proposes this, with the caveat that other technologies would not be barred from seeking similar treatment if they could provide factual justification in a future petition for modification.<sup>11</sup> FuelCell Energy's Petition asks the Commission to raise the incentive cap for all technologies. However, FuelCell Energy would support requiring additional findings before raising the incentive cap for other technologies, especially if the Commission determined that there was a danger of exhausting program funds without this limitation.

Lastly, FCE greatly appreciates CEERT's support for the Petition and agrees generally with CEERT's recommendation that the Commission implement safeguards to fairly allocate program funding. However, FCE is concerned with the specific suggestion that the Commission might split the incentive and require that an applicant wait until the close of the fiscal year to receive incentives over 1 MW.<sup>12</sup> This approach would create significant uncertainty in project funding and undermine the ability to obtain third party financing. It would be better to use other approaches to allocate program funding.

**V. FCE recommends raising the MW incentive cap for both renewable and non-renewable technologies, but would support renewable-only approach if justified by funding limitations.**

FCE's Petition did not distinguish between renewable and non-renewable technologies. This inclusive approach was deliberate. FuelCell Energy recognizes that

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<sup>11</sup> SCE Response at 3.

<sup>12</sup> CEERT Response at 2.

while renewable DG may provide a greater degree of CO<sub>2</sub> displacement, non-renewable DG nonetheless provides an overall contribution to grid and environmental benefits due to more efficient use of fossil fuels.

CCSE, SCE and PG&E suggest that the Commission limit incentives >1MW to renewable projects.<sup>13</sup> While not its first choice, FCE believes this may be reasonable if and only if the Commission expects funding limitations to restrict program participation. The better approach to funding limits, though, is to increase the SGIP budget as discussed below.

**VI. The SGIP budget should be increased to ensure effective expansion of both small and large DG markets.**

FCE strongly agrees with CEERT and CCSE that the Commission should ensure adequate funding for the SGIP program.<sup>14</sup> Expansion of the SGIP budget is particularly justified by the compelling need to meet the state's ambitious climate change mitigation goals. FCE also agrees with PG&E that the Commission should establish a 2008 SGIP budget.<sup>15</sup> It is important for purposes of planning and program development that the budget be determined well in advance of the beginning of the funding year.

**VII. Conclusion**

FCE has provided information supporting its request for a modest increase from 1 MW to 3 MW in the SGIP incentives needed to develop a viable market for larger-scaled fuel cell projects. Numerous other parties, including the investor-owned utilities, CEERT, the National Fuel Cell Research Center, potential fuel cell customers, public institutions and fuel cell manufacturers, installers and marketers have supported FCE's

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<sup>13</sup> PG&E Response at 3; SCE Response at 2.

<sup>14</sup> CEERT Response at 2 CCSE Response at 5.

<sup>15</sup> PG&E Response at 4.

Petition. For the reasons discussed above, FuelCell Energy requests that the Commission grant the relief sought in its Petition for Modification, with reasonable conditions as required in order to fairly allocate program funding.

Dated: September 10, 2007

Respectfully submitted,

By: \_\_\_\_\_/s/\_\_\_\_\_

Lynn Haug  
Ellison, Schneider & Harris, LLP  
2015 H Street  
Sacramento, CA 95811  
telephone: (916) 447-2166  
fax: (916) 447-3512  
[lmh@eslawfirm.com](mailto:lmh@eslawfirm.com)

Attorneys for FuelCell Energy, Inc.

PROOF OF SERVICE

I declare that:

I am employed in the County of Sacramento, State of California. I am over the age of eighteen years and am not a party to the within action. My business address is ELLISON, SCHNEIDER & HARRIS; 2015 H Street; Sacramento, California 95814-3109; telephone (916) 447-2166.

On September 10, 2007, I served the attached *Reply of FuelCell Energy to Responses of UTC Power Corporation, California Center for Sustainable Energy, Pacific Gas and Electric Company, and Southern California Edison Company* by electronic mail or, if no e-mail address was provided, by United States mail at Sacramento, California, addressed to each person shown on the attached service list.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 10, 2007, at Sacramento, California.

/s/

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Karen A. Mitchell



**SERVICE LIST**  
**R.04-03-017**

aabed@navigantconsulting.com  
abb@eslawfirm.com  
act6@pge.com  
aes@cpuc.ca.gov  
amber.dean@sce.com  
andy@ongrid.net  
apeterso@energy.state.ca.us  
arno@recurrentenergy.com  
atrowbridge@daycartermurphy.com  
barbee@mac.com  
Bblackbu@energy.state.ca.us  
bcragg@goodinmacbride.com  
bernadette@environmentcalifornia.org  
blaising@braunlegal.com  
brbarkovich@earthlink.net  
breene@bkp.com  
brian.biering@resources.ca.gov  
Case.Admin@sce.com  
cem@newsdata.com  
centralfiles@semprautilities.com  
ceyap@earthlink.net  
cfaber@semprautilities.com  
clower@earthlink.net  
CManson@semprautilities.com  
cmanzuk@semprautilities.com  
coconnor@redwoodenergy.org  
corie.cheeseman@miis.edu  
cpuccases@pge.com  
cpucrulings@navigantconsulting.com  
cte@eslawfirm.com  
Dan.adler@calcef.org  
Dan.Thompson@SPGSolar.com  
darryl.conklin@renewable.com  
dhouck@ndnlaw.com  
diane\_fellman@fpl.com  
djohnson@energy.state.ca.us  
dks@cpuc.ca.gov  
dot@cpuc.ca.gov  
dsh@cpuc.ca.gov  
dwang@nrdc.org  
dwood8@cox.net  
dwood8@cox.net  
editorial@californiaenergycircuit.net  
edward.randolph@asm.ca.gov  
e-recipient@caiso.com  
filings@a-klaw.com  
fortlieb@sandiego.gov  
FredMorse@MorseAssociatesInc.com  
freedman@turn.org  
gbeck@etfinancial.com  
George.Simons@itron.com

GLBarbose@LBL.gov  
golden@goldenenergy.com  
harveyederpspc.org@hotmail.com  
hcf@cpuc.ca.gov  
hfhunt@optonline.net  
hgross@globalgreen.org  
hyao@semprautilities.com  
info@calseia.org  
irene.stillings@energycenter.org  
james.lehrer@sce.com  
janmcfar@sonic.net  
jaternbu@ix.netcom.com  
jchs@pge.com  
jeanne.clinton@earthlink.net  
jennifer.porter@energycenter.org  
jf2@cpuc.ca.gov  
jhendry@sfwater.org  
jiab@ucsc.edu  
jimross@r-c-s-inc.com  
jkcliburn@gmail.com  
johnredding@earthlink.net  
jpross@votesolar.org  
jsanders@caiso.com  
jsugar@energy.state.ca.us  
jwiedman@goodinmacbride.com  
jwwd@pge.com  
karambelas@fce.com  
karen@klindh.com  
karly@solardevelop.com  
kim@cpuc.ca.gov  
kmccrea@sablaw.com  
kroberts@cityofsacramento.org  
ksmith@powerlight.com  
Kurt.Scheuermann@itron.com  
LATc@pge.com  
ldecarlo@energy.state.ca.us  
leewallach@coejlsc.com  
lglover@solidsolar.com  
liddell@energyattorney.com  
lisa\_weinzimer@platts.com  
lmerry1@yahoo.com  
lmh@eslawfirm.com  
lnelson@westernrenewables.com  
LowryD@sharpsec.com  
lp1@cpuc.ca.gov  
lpark@navigantconsulting.com  
markgsp@sbcglobal.net  
mclaughlin@braunlegal.com  
mday@goodinmacbride.com  
mdjoseph@adamsbroadwell.com  
meganmmyers@yahoo.com  
mharrison@firstsolar.com  
mhyams@sfwater.org  
michaelkyes@sbcglobal.net  
mike.montoya@sce.com

mike@borregosolar.com  
mkay@aqmd.gov  
mlrock@shocking.com  
mnce@pge.com  
mrawson@smud.org  
mrl@cpuc.ca.gov  
mrw@mrwassoc.com  
mxh@cpuc.ca.gov  
nellie.tong@us.kema.com  
nes@a-klaw.com  
npedersen@hanmor.com  
obrienc@sharpsec.com  
pairedhelix@cox.net  
pforkin@tejassec.com  
psd@cpuc.ca.gov  
pthompson@summitblue.com  
pw1@cpuc.ca.gov  
rcolicchia@harris-assoc.com  
rhwisser@lbl.gov  
rishii@aesc-inc.com  
rjl9@pge.com  
rliebert@cfbf.com  
rmacdona@energy.state.ca.us  
rob@sunlightelectric.com  
Robert.F.LeMoine@sce.com  
robert\_margolis@nrel.gov  
sc1@cpuc.ca.gov  
scott.tomashefsky@ncpa.com  
scott@debenhamenergy.com  
scottanders@sandiego.edu  
shallenbgr@aol.com  
skronland@altshulerberzon.com  
smiller@energy.state.ca.us  
solar@oxypower.com  
spatrick@sempira.com  
ssmyers@att.net  
steve@connectenergy.com  
steve@energyinnovations.com  
steveng@destrategies.com  
susan.freedman@sdenergy.org  
susank@bonair.stanford.edu  
tam@cpuc.ca.gov  
tdp@cpuc.ca.gov  
thamilton@cheers.org  
thunt@cecmail.org  
tjt@cpuc.ca.gov  
tomb@crossborderenergy.com  
tony.foster@itron.com  
ttutt@energy.state.ca.us  
twombly@kw-engineering.com  
vjb@cpuc.ca.gov  
vwood@smud.org  
wbooth@booth-law.com  
wmb@cpuc.ca.gov  
www@eslawfirm.com  
zca@cpuc.ca.gov

MARK SHIRILAU  
ALOHA SYSTEMS, INC.  
14801 COMET STREET  
IRVINE CA 92604-2464

PETER T. PARRISH  
CALIFORNIA SOLAR ENGINEERING, INC.  
820 CYNTHIA AVE.  
LOS ANGELES CA 90065

ROBERT PANORA  
TECOGEN, INC.  
45 FIRST AVENUE  
WALTHAM MA 02451